

STATE OF MICHIGAN  
COURT OF APPEALS

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THERESA CASASANTA as Power of Attorney  
for JOSEPHINE AVOLIO,

UNPUBLISHED  
July 20, 2006

Plaintiff-Appellant,

v

VAN DYKE-SHELBY LAND DEVELOPMENT  
& COMPANY,

No. 267807  
Macomb Circuit Court  
LC No. 2005-002853-CK

and

REGINALD D. GREENSLADE,

Defendants-Appellees.

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Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(7) in favor of defendants. We affirm.

A motion for summary disposition under MCR 2.116(C)(7) tests whether a claim is barred because of, among other things, release, prior judgment, statute of limitations, or other disposition of the claim before commencement of the action and is appropriate if the moving party is entitled to judgment as a matter of law. *McDowell v Detroit*, 264 Mich App 337, 345-346; 690 NW2d 513 (2004). A trial court's interpretation of a release and ruling on a motion for summary disposition are reviewed de novo. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6, 13; 614 NW2d 169 (2000).

The law governing summary disposition based on a release has been summarized as follows:

Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. MCR 2.116(C)(7). A release of liability is valid if it is fairly and knowingly made. The scope of a release is governed by the intent of the parties as it is expressed in the release.

If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become 'subjective, and irrelevant,' and the legal effect of the language is a question of law to be resolved summarily. [*Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996) (citations omitted).]

According to the plain terms of the release, plaintiff released any claims she may have arising from “any and all actions, causes of actions, claims or demands for damages, costs, expenses, compensation, consequential damages or any other thing whatsoever on account of, or in any other way growing out of, any and all know [sic] and unknown possible claims and damages regarding case number 02-0009-CB in Macomb County Circuit Court, Mt. Clemens, Michigan, except as to future distributions.” The term “any and all” is the broadest classification, leaving no room for exceptions. *Romska v Oppen*, 234 Mich App 512, 515-516; 594 NW2d 853 (1999). There is no reason to look beyond the plain, explicit, and unambiguous language of the release in order to conclude that no further liability exists arising out of plaintiff’s relationship with Van Dyke-Shelby Development & Company “except as to future distributions.”<sup>1</sup>

Given our resolution of this issue, we need not address the trial court’s finding that plaintiff was required to tender back the settlement proceeds before filing the present suit. Additionally, we need not address plaintiff’s argument that defendants breached their fiduciary duty to plaintiff as plaintiff did not raise this issue in the statement of questions presented. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).<sup>2</sup>

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<sup>1</sup> Despite the plain and unambiguous language of the release, plaintiff contends that the provision in the release that “all future distributions . . . shall be calculated using 11.47% . . .” meant that she would receive an additional payment of \$138,589.73 “held in reserve on her behalf.” This argument is not supported by the language of the release as discussed above, nor is it supported by the facts. The documents quoted above reveal that during negotiations involving the cross claim plaintiff’s attorney anticipated a “settlement offer.” On April 1, 2003, defendants made a settlement offer in the amount of \$138,589.73 as well as reimbursement in the amount of \$24,010.40. The April 1, 2003, letter containing the settlement offer stated, “This offer of settlement is hereby withdrawn if not accepted in writing by April 30, 2003.” The offer was not accepted and the case proceeded to facilitation and ultimately concluded with a settlement agreement and release.

<sup>2</sup> Nonetheless, the factual premise for plaintiff’s argument – i.e., that defendant never disputed plaintiff’s entitlement to \$138,589.73, is erroneous.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ Jessica R. Cooper